

Vietnam War, courts have stated that Congress' failure to prohibit the president from using funds for the war (or for certain aspects of it) constituted authorization. If Congress can exercise its appropriations power to limit the president's power as commander in chief—a power specifically provided for in the Constitution—a fortiori it can exercise the appropriations power to limit the president's foreign affairs power—a power not expressly vested in the president, but implied from other powers and shared with Congress.

Since World War II, Congress has consistently used appropriations as a means of controlling some aspects of foreign policy. In 1989, commentator Louis Fisher characterized the assertion that Congress cannot control foreign affairs by withholding appropriations as "the most startling constitutional claim emanating from the Iran contra hearings" ("How Tightly Can Congress Draw the Purse Strings?" *American Journal of International Law*). Or, as Professor John Hart Ely put it in his 1993 book, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath*, assertions "that foreign affairs just aren't any of Congress's business . . . bear no relation to the language or purposes of the founding document, or the first century and a half of our history."

EVEN KISSINGER CONCEDED

Even strong proponents of broad executive power in foreign affairs agree that Congress can use the appropriations power to affect the conduct of foreign affairs. Professor Louis Henkin, chief reporter for the latest Restatement of U.S. Foreign Relations Law, has written, "Congress has insisted and presidents have reluctantly accepted that in foreign affairs as in domestic affairs, spending is expressly entrusted to Congress. . . ." And then Secretary of State Henry Kissinger conceded, following the executive confrontations with Congress during the Vietnam War: The decade long struggle in this country over executive dominance in foreign affairs is over. The recognition that Congress is a coequal branch of government is the dominant fact of national politics today. The executive accepts that Congress must have both the sense and the reality of participation foreign policy must be a shared enterprise.

Whatever the respective powers of Congress and the president to decide whether to recognize a foreign state—a question on which the Constitution is silent and the Supreme Court has never ruled—that issue is not raised by the Dole-Kyl bill. Rather, the issues are whether Congress can enact legislation that may affect U.S. foreign policy interests, and whether it can achieve its ends through use of the appropriations power. Long-established practice, the writings of scholars and statesmen, and judicial decisions all indicate that the answer to both is clearly yes.

COMPARISON OF S. 770 AND S. 1322

The withholding of funds pending groundbreaking for a new embassy in Jerusalem in 1996 has been deleted (Section 3(a)(2) and section 3(b) of S. 770).

A new finding concerning a 1990 resolution on Jerusalem passed by Congress has been added (finding 9 of S. 1322).

The statement of policy has been amended to include reference to Jerusalem being undivided and open to all ethnic and religious groups.

The statement of policy has been re-worded to use "relocated" rather than "officially open" in reference to the Embassy (section 3).

Fiscal Year 1995 funding (section 4 of S. 770) has been deleted.

Funding for relocation costs in fiscal year 1996 and fiscal year 1997 has been modified to

be discretionary rather than mandatory (section 4 of S. 1322).

Mr. LIEBERMAN. Mr. President, I rise today to join with Senators DOLE, MOYNIHAN, KYL and INOUE and most of my other colleagues in introducing the Jerusalem Embassy Relocation Implementation Act, S. 1322. I hope that this bill will gain the support of all of my colleagues in the Senate.

Mr. President, Jerusalem is and always shall be the capital of Israel. Jerusalem is a unified city in which the rights of all faiths have been respected. The Embassy of the United States of America to Israel should be in that country's capital, the city of Jerusalem.

Earlier this year, I joined with many of my colleagues in sending a letter to the Secretary of State encouraging the administration to begin planning for relocation of the U.S. Embassy to the city of Jerusalem. This process must move forward.

The bill we are introducing today establishes U.S. policy that Jerusalem should be recognized as the capital of the state of Israel.

The bill also establishes a timetable for construction and relocation of the U.S. Embassy to Israel in Jerusalem by May 31, 1995. The Secretary of State is required to present an implementation plan to the Senate within 30 days of enactment and provide a progress report every 6 months. The bill allocates substantial initial funding for the project—\$25 million in fiscal 1996 and \$75 million in fiscal 1997.

Like the President and many of my colleagues, I believe we can and should move forward to establish the U.S. Embassy in Jerusalem in a manner consistent with the continued negotiation and implementation of the peace process which achieved another significant step last month. The modification to this legislation from the version earlier introduced, S. 770, will ensure that this can be accomplished. There is no change in the real result of the bill: The opening of the U.S. Embassy in Jerusalem by May 31, 1999.

Mr. President, the Jerusalem 3,000 celebration underway in Israel and throughout the world commemorates the 3,000th anniversary of King David's entry into Jerusalem. There could be no more fitting occasion than this celebration to commit America to finally establish our Embassy in Jerusalem by the end of the decade.

With the adoption of the Jerusalem Embassy Relocation Implementation Act and continued progress in the peace process, we can enter the 21st century with the U.S. Embassy in Jerusalem, the capital of a safe and secure Israel, at peace with her Arab neighbors, in an economically prosperous Middle East.

ORDERS FOR TUESDAY, OCTOBER 17, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate

completes its business today, it stand in recess until 9:45, Tuesday, October 17, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period for morning business until the hour of 12:30 p.m., with Senators permitted to speak therein for 5 minutes each, with the exception of the following: Mr. LOTT, 30 minutes; Mr. THOMAS, 60 minutes; Mr. HARKIN and Mr. SIMON, 45 minutes; Mr. BURNS, 10 minutes; Mr. FRIST, 15 minutes.

I further ask unanimous consent that at the hour of 12:30 p.m., the Senate stand in recess until the hour of 2:15 p.m. for the weekly policy luncheons to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the vote on the motion to invoke cloture on the substitute amendment to H.R. 927, the Cuban sanctions bill, occur at a time to be determined by the majority leader after consultation with the minority leader; I further ask unanimous consent that in accordance with the provisions of rule XXII, Senators have until the hour of 12:30 on Tuesday to file any second-degree amendments to the substitute amendment to H.R. 927.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, for the information of all Senators, if cloture is invoked on Tuesday, the Senate can be expected to be in session into the evening in order to complete action on the Cuban sanctions bill. A third cloture motion was filed today. Therefore, if cloture is not invoked on Tuesday, a third vote will occur during Wednesday's session.

Also during next week's session, the Senate can be expected to consider any of the following items: Labor HHS appropriations bill, if a consent agreement can be reached after brief consideration; NASA authorization; Amtrak authorization; available appropriations conference reports.

I am also going to announce that the first cloture vote will not be before 5 p.m. on Tuesday. To clarify, there will not be any votes until 5 p.m.

Let me also announce that under the able leadership of Senator ROTH of the Senate Finance Committee, the Republicans have completed action on the tax part of the reconciliation package—\$245 billion in tax cuts; as far as family tax credits, \$500. It is permanent.

There are a lot of good features in this bill: capital gains rate reduction, estate tax, family, health, businesses, a number of provisions that I think the American people will certainly find to their liking. I want to compliment the distinguished chairman of the Finance Committee. This is his first tax bill.